

Title	Juvenile Dependency Mediation Program Requirements (adopt Cal. Rules of Court, rule 1405.5; repeal Cal. Stds. Jud. Admin., § 24.6)
Summary	Section 24.6 of the Standards of Judicial Administration would be repealed and rule 1405.5 would be adopted to make the current discretionary program guidelines of juvenile dependency mediation programs mandatory.
Source	Family and Juvenile Law Advisory Committee Hon. Michael Nash, Co-chair Hon. Mary Ann Grilli, Co-chair
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Discussion	<p>The Family and Juvenile Law Advisory Committee is proposing the adoption of rule 1405.5, which would require the local programs to adhere to guidelines currently in section 24.6. The rule will ensure fairness, accountability, and a high quality of services to the children and families served by the programs as well as improve the safety, confidentiality, and consistency of dependency mediation programs statewide.</p> <p>In 2001, section 24.6 of the California Standards of Judicial Administration established statewide guidelines for juvenile dependency mediation programs. At that time, some program administrators expressed concern about their ability to adhere to the standards if they were mandatory. Since then, however, program administrators have come to agree that the standards have improved the dependency mediation practice and that they should be mandated in order to maintain the high quality of service being delivered.</p> <p>Proposed rule 1405.5 includes the same program guidelines as section 24.6, with the following changes:</p> <ol style="list-style-type: none"> 1. All discretionary language was replaced with mandatory language; 2. Plain language changes were made; 3. Subdivisions (b)(2)(A)–(D), which consider the best interest of the child, were reorganized to emphasize the protection and stability of the child; 4. Subdivision (b)(5) was added to define “protocols”; 5. Subdivision (d)(2)(B) was added giving the child the right to

attend the dependency mediation unless the child chooses not to attend or is too young to decide, in which case the child's attorney is required to attend. The child is entitled to participate in the mediation session because the child is a party. Where the child cannot participate, the attorney is required to participate to ensure the child is represented;

6. Subdivision (d)(5)(B) was added to ensure mediation participants know the sessions are confidential;
7. Subdivisions (g), (h), and (i), which address training and experience requirements, was reorganized to make them easier to understand; and
8. The mediator ethical standards in subdivision (j) were reorganized to place those regarding confidentiality together.

The committee specifically requests public comment on subdivision (e), which specifies the minimum training and experience required of dependency mediators. The current proposal spells out some alternative means of obtaining the necessary training and experience:

- Subdivision (f) allows mediators who do not possess experience or training to substitute subsequent training within their first year of employment; and
- Subdivision (g) provides the court with the discretion to substitute additional experience for a portion of the education, or additional education for a portion of the experience, required by subdivisions (e) and (f).

While the availability of multiple avenues provides flexibility, it also creates ambiguity regarding which, if any, of the training and experience qualifications listed in subdivision (e) should be considered mandatory. Therefore, the committee requests input on which training and experience requirements in subdivision (e) should be absolutely required.

The text of section 24.6 of the California Standards of Judicial Administration is attached, with revisions marked at pages 3–16.

Attachments

Section 24.6 of the California Standards of Judicial Administration would be repealed and Rule 1405.5 of the California Rules of Court would be adopted, effective January 1, 2004 to read:

Sec. 24.6. Rule 1405.5. Uniform standards of practice for eCourt-connected child protection/dependency mediation

(a) **[Purpose]** ~~This sets forth standards of practice and administration for court-connected dependency mediation services in accordance with Welfare and Institutions Code section 350.~~ The purpose of this rule is to ensure fairness, accountability, and a high quality of services to children and families and to improve the safety, confidentiality, and consistency of dependency mediation programs statewide.

(b) **[Definitions]**

(1) “Dependency mediation” is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child’s safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.

(2) “Safety and best interest of the child” refers to the child’s physical, psychological, and emotional well-being. Determining the safety and best interest of the child includes consideration of the following:

~~(A) The ongoing need of the child to cope with the issues that caused his or her involvement in the juvenile dependency system;~~

~~(B) The preservation and strengthening of the family and family relationships whenever appropriate and possible;~~

~~(C) The manner in which the child may be protected from the risk of future abuse or neglect; and~~

~~(D) The child’s need for safety, stability, and permanency.~~

(A) The manner in which the child may be protected from the risk of future abuse or neglect;

1 (B) The child’s need for safety, stability and permanency;

2
3 (C) The ongoing need of the child to cope with the issues that caused his
4 or her involvement in the juvenile dependency system; and

5
6 (D) The preservation and strengthening of the family and family
7 relationships whenever appropriate and possible.

8
9 (3) “Safety of family members” refers to the physical, psychological, and
10 emotional well-being of all family members, with consideration of the
11 following:

12
13 (A) The role of domestic violence in creating a perceived or actual threat
14 for the victim and

15
16 (B) The ongoing need of family members to feel safe from physical,
17 emotional, and psychological abuse.

18
19 (4) “Differential domestic violence assessment” is a process used to assess
20 the nature of any domestic violence issues in the family so that the
21 mediator may conduct the mediation in such a way as to protect any
22 victim of domestic violence from intimidation and to correct for power
23 imbalances created by past violence and feared prospective violence.

24
25 (5) “Protocols” refer to the local set of rules, policies, and procedures
26 developed and implemented by juvenile dependency mediation programs.
27 All protocols must be developed in accordance with pertinent state laws,
28 California Rules of Court, and local court rules.

29
30 **(c) [Responsibility for mediation services]**

31
32 (1) Each court that has a dependency mediation program ~~should~~ must ensure
33 that:

34
35 (A) Dependency mediators are impartial, are competent, and uphold the
36 ~~standards of practice~~ contained in this rule ~~section~~;

37
38 (B) Dependency mediators maintain an appropriate focus on issues
39 related to the child’s safety and best interest and the safety of all
40 family members;

- 1 (C) Dependency mediators provide a forum for all interested persons to
2 develop a plan focused on the best interest of the child, emphasizing
3 family preservation and strengthening and the child's need for
4 permanency;
5
- 6 (D) Dependency mediation services and case management procedures
7 are consistent with applicable state law without compromising each
8 party's right to due process and a timely resolution of the issues;
9
- 10 (E) Dependency mediation services demonstrate accountability by:
11
- 12 (i) Providing for the processing of complaints about a mediator's
13 performance and
14
- 15 (ii) Participating in any statewide and national data collection
16 efforts;
17
- 18 (F) The dependency mediation program uses an intake process that
19 screens for and informs the mediator about any restraining orders,
20 domestic violence, or safety-related issues affecting the child or any
21 other party named in the proceedings;
22
- 23 (G) Whenever possible, dependency mediation ~~should be~~ is conducted in
24 the shared language of the participants. When the participants speak
25 different languages, interpreters, court-certified when possible,
26 should be assigned to translate at the mediation session; and
27
- 28 (H) Dependency mediation services preserve, in accordance with
29 pertinent law, party confidentiality, whether written or oral, by the:
30
- 31 (i) Storage and disposal of records and any personal information
32 accumulated by the mediation program and
33
- 34 (ii) Management of any new child abuse reports and related
35 documents.
36
- 37 (2) Each dependency mediator ~~should~~ must:
38
- 39 (A) Assist the mediation participants in reaching a settlement of the
40 issues that is consistent with preserving the safety and best interest

1 of the child, first and foremost, and the safety of all family members
2 and participants;

3
4 (B) Discourage participants from blaming the victim and from denying
5 or minimizing allegations of child abuse or violence against any
6 family member;

7
8 (C) Be conscious of the values of preserving and strengthening the
9 family ~~preservation and strengthening~~ as well as the child's need for
10 permanency;

11
12 (D) Not make any recommendations or reports of any kind to the court,
13 except as to the terms of any agreement reached by the parties;

14
15 (E) Treat all mediation participants in a manner ~~preserving~~ that preserves
16 their dignity and self-respect;

17
18 (F) Ensure a safe and balanced environment for all participants to
19 express and advocate for their positions and interests;

20
21 (G) Identify and disclose potential grounds upon which a mediator's
22 impartiality might reasonably be challenged through a procedure that
23 allows for the selection of another mediator within a reasonable
24 time. If a dependency mediation program has only one mediator and
25 the parties are unable to resolve the conflict, the mediator ~~should so~~
26 must inform the court;

27
28 (H) Identify and immediately disclose to the participants any reasonable
29 concern regarding the mediator's continuing capacity to be impartial,
30 ~~through a procedure that allows the participants to explore the matter~~
31 ~~and determine so they can decide~~ whether the mediator should
32 withdraw or continue;

33
34 (I) Ensure that all participants understand the status of the case in
35 relation to the ongoing court process, what the case plan requires of
36 them, and the terms of any agreement reached during the mediation;
37 and

38
39 (J) Conduct appropriate review to evaluate the viability of any
40 agreement reached, including the identification of any provision that

1 depends on the action or behavior of any individual who did not
2 participate in creating the agreement.
3

- 4 (d) **[Mediation process]** The dependency mediation process ~~should~~ must be
5 conducted in accordance with pertinent state laws, ~~and all~~ applicable rules of
6 court, and ~~should include~~ local protocols. All local protocols ~~should~~ must
7 include the following:
8

- 9 (1) The process by which cases are sent to mediation, including:
10

11 (A) Who may request mediation;
12

13 (B) Who decides which cases are to be sent to mediation;
14

15 (C) Whether mediation is voluntary or mandatory;
16

17 (D) How mediation appointments are scheduled; and
18

19 (E) The consequences, if any, to a party who fails to participate in the
20 mediation session.
21

- 22 (2) Identification of the participants in the mediation, according to the
23 following guidelines:
24

25 (A) When at all possible, dependency mediation should include the
26 direct and active participation of the parties, including but not
27 limited to the child, the parents, a representative of the child
28 protective agency, and, at one stage or another, their respective
29 attorneys.
30

31 (B) The child has a right to attend the dependency mediation. If after
32 being informed of this right, the child chooses not to attend or is too
33 young to decide, then the child's attorney must attend. The child's
34 attorney should use the following criteria to decide whether the
35 young child should participate in mediation:
36

37 (i) The age of the child;
38

39 (ii) The issues to be discussed at the mediation; and
40

1 (iii) The emotional stability of the child and his or her ability to
2 participate without compromising his or her emotional well-
3 being.

4
5 ~~(B)~~ (C) As appropriate, ~~the child who is the subject of the proceeding,~~
6 other family members, and any guardian ad litem, Court
7 Appointed Special Advocate (CASA), or other involved person or
8 professional may participate in the mediation.

9
10 ~~(C)~~ (D) Any attorney who has not participated in the mediation should
11 have an opportunity to review and agree to any proposal before it
12 is submitted to the court for approval.

13
14 ~~(D)~~ (E) A mediation participant who has been a victim of violence
15 allegedly perpetrated by another mediation participant has the
16 right to be accompanied by a support person. Unless otherwise
17 invited or ordered to participate under the protocols developed by
18 the court, ~~such~~ a support person may not actively participate in
19 the mediation except to be present as a source of emotional
20 support for the alleged victim.

21
22 (3) A means by which the mediator may review relevant case information
23 before the mediation.

24
25 (4) A protocol for providing mediation in cases in which domestic violence or
26 violence perpetrated by any other mediation participant has, or allegedly
27 has, occurred. ~~Such a~~ This protocol ~~should~~ must include specialized
28 procedures designed to protect victims of domestic violence from
29 intimidation by perpetrators. The protocol ~~should~~ must also appropriately
30 address all family violence issues by encouraging the incorporation of
31 appropriate safety and treatment interventions in any settlement. The
32 protocol ~~should~~ must include the following:

33
34 (A) A review of case-related information ~~prior to~~ before commencing the
35 mediation;

36
37 (B) The performance of a differential domestic violence assessment to
38 determine the nature of the violence, for the purposes of:

39
40 (i) Assessing the ability of the victim to fully and safely participate
41 and to reach a noncoerced settlement;

- 1 (ii) Clarifying the history and dynamics of the domestic violence
2 issue in order to determine the most appropriate manner in
3 which the mediation can proceed;
4
- 5 (iii) Assisting the parties, attorneys, and other participants in
6 formulating an agreement following a discussion of appropriate
7 safeguards for the safety of the child and family members;
8
- 9 (C) Structuring the mediation in a manner designed to meet the need of
10 the victim of violence for safety and for full and noncoerced
11 participation in the process, including:
12
- 13 (i) Giving the victim of violence the option of attending mediation
14 sessions without the alleged perpetrator being present;
15
- 16 (ii) Permitting the victim to have a support person present during
17 the mediation process, whether he or she elects to be seen
18 separately from or together with the alleged perpetrator; and
19
- 20 (iii) Identifying the participants as provided in subdivision (d)(2)
21 above.
22
- 23 (5) The provision of an oral or written orientation that facilitates participants'
24 safe, productive, and informed participation and decision making by
25 educating them about:
26
- 27 (A) How the mediation process is conducted, who generally participates
28 in the sessions, the range of disputes that may be discussed, and
29 what to expect at the conclusion of mediation;
30
- 31 (B) The importance of keeping all communications, negotiations, or
32 settlement discussion by and between the participants in the course
33 of mediation confidential;
34
- 35 ~~(B)~~ (C) The mediator's role and any limitations on the confidentiality of
36 the process; and
37
- 38 ~~(C)~~ (D) The right of a participant who has been a victim of violence
39 allegedly perpetrated by another mediation participant to be
40 accompanied by a support person and to have sessions with the
41 mediators separate from the alleged perpetrator.

1
2 (6) Protocols related to the inclusion of minors in the mediation, including: a
3 requirement to explain the mediation process to a participating child in an
4 age-appropriate way. The following information must be explained to the
5 child:
6

7 ~~(A) Criteria for determining whether or not a minor should participate in~~
8 ~~mediation, including the following:~~
9

10 ~~(i) The age of the child;~~
11

12 ~~(ii) The issues to be discussed at the mediation; and~~
13

14 ~~(iii) The emotional stability of the child and his or her ability to~~
15 ~~participate without compromising his or her emotional well-~~
16 ~~being;~~
17

18 ~~(B) A protocol for a child's involvement, in those cases in which a child~~
19 ~~participates in the mediation, including a requirement to explain~~
20 ~~the mediation process to a participating child in an age-~~
21 ~~appropriate way. The following information should must be~~
22 ~~explained to the child:~~
23

24 ~~(i) (A) Any options available to the minor for his or her participation~~
25 ~~in the mediation;~~
26

27 ~~(ii) (B) What occurs during the mediation process;~~
28

29 ~~(iii) (C) The role of the mediator;~~
30

31 ~~(iv) (D) What the child may realistically expect from the mediation,~~
32 ~~and the limits on his or her ability to affect the outcome;~~
33

34 ~~(v) (E) Any limitations on the confidentiality of the process;~~
35

36 ~~(vi) (F) The child's absolute right to be accompanied, throughout the~~
37 ~~mediation, by his or her attorney and other support persons;~~
38 ~~and~~
39

1 ~~(vii)~~ (G) The child's ability to take a break or terminate the
2 mediation session if his or her emotional or physical well-
3 being is threatened.
4

5 (7) Policy and procedures for scheduling follow-up mediation sessions.
6

7 (8) A procedure for suspending or terminating the process if the mediator
8 determines that mediation cannot be conducted in a safe or an
9 appropriately balanced manner or if any party is unable to participate in
10 an informed manner for any reason, including fear or intimidation.
11

12 (9) A procedure for ensuring that each participant clearly understands any
13 agreement reached during the mediation, as well as a procedure for
14 presenting the agreement to the court for its approval. ~~Such~~ This
15 procedure ~~should~~ must include the requirement that all parties and the
16 attorneys participating in the agreement review and approve it and
17 indicate their agreement in writing ~~prior to~~ before its submission to the
18 court.
19

20 **(e) [Training and experience requirements for dependency mediators]**

21 Dependency mediators ~~should~~ must meet the following minimum
22 qualifications:
23

24 (1) Possession of one or more of the following:
25

26 (A) A master's or doctoral degree in psychology, social work, marriage
27 and family therapy, conflict resolution, or another behavioral science
28 substantially related to family relationships, family violence, child
29 development, or conflict resolution from an accredited college or
30 university;
31

32 (B) A ~~Juris D~~doctorate degree with demonstrated experience in the field
33 of juvenile or family law; or
34

35 (C) A background in mediation along with training and/or experience
36 acceptable to the court to be served;
37

38 (2) At least three years of experience in mediation, counseling,
39 psychotherapy, or any combination thereof, ~~preferably~~ in a setting related
40 to juvenile dependency court or domestic relations ~~and with the ethnic~~
41 ~~population to be served~~; or at least two years of experience as an attorney,

1 a referee, or a judicial officer, practicing in juvenile dependency court or
2 domestic relations ~~with the ethnic population to be served~~;

3
4 (3) Experience and sensitivity to the local demographics of the population
5 served;

6
7 ~~(3)~~(4) Demonstrated knowledge of the juvenile court dependency system and
8 the child welfare and protection systems, as well as the ability to
9 interpret and apply laws, rules, regulations, and procedures as they
10 relate to the dependency mediation court system and the process in
11 which the mediations are conducted; and

12
13 ~~(4)~~(5) A minimum of 40 hours of mediation training and demonstrated ability
14 to mediate multiparty, high-conflict cases.

15
16 (f) **[Substitution for training and experience requirements—subsequent**
17 **training]** Those mediators who do not already possess dependency experience
18 or training may substitute the completion of at least 24 hours of training within
19 12 months of employment, as follows:

20
21 (1) At least 16 hours of the training ~~should~~ must cover the following subject
22 areas:

23
24 (A) The dynamics of physical and sexual abuse, exploitation, emotional
25 abuse, endangerment, and neglect of children, and their impacts on
26 children;

27
28 (B) Child development and its relevance to the needs of children, to
29 child abuse and neglect, and to child custody and visitation
30 arrangements;

31
32 (C) The dynamics of domestic and family violence, its relevance to child
33 abuse and neglect, and its effects on children and adult victims;

34
35 (D) Substance abuse and its impact on children;

36
37 (E) The roles and participation of parents, other family members,
38 children, attorneys, guardians ad litem, the child welfare agency
39 staff, Court Appointed Special Advocates (CASAs), law
40 enforcement, mediators, the court, and other involved professionals
41 and interested participants in the mediation process; and

1
2 (F) Dependency law.
3

4 (2) The remaining eight hours of required training may cover any of the
5 topics above or any of the following:
6

7 (A) The dynamics of disclosure and recantation and of denial of child
8 abuse and neglect;
9

10 (B) Adult and child psychopathology;
11

12 (C) The psychology of families, the dynamics of family systems, and the
13 impacts of separation, divorce, and family conflict on children;
14

15 (D) Safety and treatment issues related to child abuse, neglect, and
16 family violence;
17

18 (E) Available community resources for dealing with domestic and family
19 violence; substance abuse; and housing, educational, medical, and
20 mental health needs in addition to related services for families in the
21 juvenile dependency system, such as regional centers;
22

23 (F) The impacts that the mediation process can have on children's well-
24 being and behavior, and when and how to involve children in
25 mediation;
26

27 (G) Methods to assist parties in developing options for different
28 parenting arrangements that consider the needs of children and each
29 parent's capacity to parent;
30

31 (H) Awareness of differing cultural values, including the dynamics of
32 cross-generational cultural issues;
33

34 (I) The Americans with Disabilities Act, its requirements, and strategies
35 for handling situations involving disability issues or special needs;
36

37 (J) The effect on family dynamics of removal or nonremoval of children
38 from their homes and family members, including the related
39 implications for the mediation process;
40

41 (K) The effect of poverty on family dynamics and parenting; and

(L) An overview of the special needs of dependent children, including their educational, medical, and psychosocial needs as well as the resources available to meet those needs.

~~(g)~~ **[Volunteers, interns, or paraprofessionals]** Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they work with a professional mediator who is qualified to act as a professional dependency mediator as described in subdivision (e) of this standard. Any such volunteers, interns, or paraprofessionals should be exempt from the minimum qualification standards numbered (e)2 and 3 above.

~~(h)~~**(g)** **[Substitution for education or experience]** The juvenile dependency court may ~~substitute~~ approve substitution of additional experience for a portion of the education, or additional education for a portion of the experience, required by (e) and (f) ~~above~~.

~~(i)~~**(h)** **[Continuing education requirements for mediators and mediation supervisors]** All dependency mediators, mediation supervisors, and program coordinators and directors ~~should~~ must participate in at least 15 hours per year of continuing instruction designed to enhance mediation skills and techniques, including at least 5 hours specifically related to the issue of family violence.

(i) **[Volunteers, interns, or paraprofessionals]** Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they are supervised by a professional mediator who is qualified to act as a professional dependency mediator as described in subdivision (e) of this rule. These volunteers, interns, or paraprofessionals are exempt from the training and experience requirements in (e)(2), (e)(3), and (e)(4).

(j) **[Ethics/standards of conduct]** Mediators ~~should~~ must:

- (1) Meet the practice and ethical standards of the applicable code of ethics for court employees.
- (2) Maintain objectivity, provide information to and gather information from all parties, and be aware and control one's own biases.
- (3) Protect the confidentiality of all parties, including the child. Mediators ~~should~~ must not release information or make any recommendations about

1 the case to the court or to any individual except as ~~compelled~~required by
2 statute (for example, the requirement to make mandatory child abuse
3 reports or reports to authorities regarding threats of harm and/or violence).
4 Any limitations to confidentiality ~~should~~ must be clearly explained to all
5 mediation participants before any substantive issues are discussed in the
6 mediation session.

7
8 (4) Maintain the confidential relationship between any family member or the
9 child and his or her treating counselor, including the confidentiality of
10 any psychological evaluations.

11
12 ~~(4)~~(5) Decline to provide legal advice.

13
14 ~~(5) Strive to maintain the confidential relationship between any family~~
15 ~~member or the child and his or her treating counselor, including the~~
16 ~~confidentiality of any psychological evaluations.~~

17
18 (6) Consider the health, safety, welfare, and best interest of the child and the
19 safety of all parties and other participants in all phases of the process, and
20 encourage the formulation of settlements ~~preserving~~ that preserve these
21 values.

22
23 (7) Operate within the limits of his or her training and experience, and
24 disclose any limitations or bias that would affect his or her ability to
25 conduct the mediation.

26
27 (8) Not require the child to state a preference for placement.

28
29 (9) Disclose to the court, to any participant, and to his or her attorney any
30 conflicts of interest or dual relationships, and not accept any referral
31 except by court order or the parties' stipulation. In the event of a conflict
32 of interest, the mediator ~~should~~ must suspend mediation and meet and
33 confer in an effort to resolve the conflict of interest either to the
34 satisfaction of all parties or according to local court rules. The court may
35 order mediation to continue with another mediator or offer the parties an
36 alternative method of resolving the issues in dispute.

37
38 (10) Not knowingly assist the parties in reaching an agreement that would be
39 unenforceable for a reason such as fraud, duress, illegality, overreaching,
40 absence of bargaining ability, or unconscionability.

- 1 (11) Protect the integrity of the mediation process by terminating the mediation
2 when a party or participant has no genuine interest in resolving the
3 dispute and is abusing the process.
4
- 5 (12) Terminate any session in which an issue of coercion, inability to
6 participate, lack of intention to resolve the issues at hand, or physical or
7 emotional abuse during the mediation session is involved.